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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,108	01/17/2002	Takayuki Tsukimoto	03500.016111	5726
5514	7590	10/07/2003	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112				AGUIRRECHEA, JAYDIA
ART UNIT		PAPER NUMBER		
2834				

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/047,108	TSUKIMOTO, TAKAYUKI
	<b>Examiner</b>	<b>Art Unit</b>
	Jaydi A. Aguirrechea	2834

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 July 2003.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 is/are withdrawn from consideration.
- 5) Claim(s) 10,18,22,26 and 30 is/are allowed.
- 6) Claim(s) 8,9,11-13,17,19-21,23,24,29,31 and 32 is/are rejected.
- 7) Claim(s) 14-16, 25, 27-28 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 17 January 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>ids</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 1-7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 0703. Applicant's election with traverse of Group II in Paper No. 0703 is acknowledged. The traversal is on the ground(s) that the subject matter is closely related. The examiner agrees to examine Groups II and III together in the present application. Group I (claims 1-7) requires a different search, therefore the requirement is still deemed proper and is therefore made FINAL.

### ***Drawings***

2. Figures 10A, 10B and 11 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The abstract of the disclosure is objected to because it should not exceed 150 words. Correction is required. See MPEP § 608.01(b).

4. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 8-9, 11-13, 21, 23-24, 29 and 31-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Mishiro (US4764702).

Regarding claims 8, 11 and 12, Mishiro discloses a first elastic member (4), a second elastic member (5), an electro-mechanical energy conversion element (3,8) disposed between the first and the second elastic member, a rotor (13) that is brought into contact with a frictional surface (16); and the driving signal is applied to the electro-mechanical element in order to produce a circular or elliptical movement.

7. With regards to claim 9, Mishiro discloses the driving signal is applied to the electromechanical element (Column 2, lines 28-34).

8. With regards to claim 13, Mishiro discloses the electro-mechanical element disposed on an opposite side of the first elastic member with the third elastic member interposed there between.

9. With regards to claim 21, 23-24, Mishiro discloses an element (7) having increased diameter.

10. With regards to claims 29, 31-32, Mishiro discloses another electromechanical energy conversion element fixed to the third elastic member (8, 3).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 17, 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mishiro (US 4764702).

It has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973). In the instant case, the first and third elastic members are made integrally.

***Allowable Subject Matter***

13. Claims 10, 18, 22, 26 and 30 are allowed.

14. Claims 14-16, 25, 27-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. The following is an examiner's statement of reasons for allowance: the prior art of record fails to teach either alone or in obvious combination the limitation that the center of an anti-node of the bending vibration does not coincide with a center portion of the third elastic member in an axial direction of the vibration. Regarding claims 25, 27-28 the prior art or record does not teach the third member including a thinner portion.

***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jaydi A. Aguirrechea whose telephone number is 703-305-2277. The examiner can normally be reached on M-Th 9-7.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nestor Ramirez can be reached on 703-308-1371. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

JAA  
9/21/03

*Thomas M. Dougherty*

TM  
9/21/03